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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

NEETA THAKUR, <i>et al.</i>,	)	Case No. 25-cv-4737-RFL
Plaintiffs,)	
v.	)	DEFENDANTS' RESPONSE TO PLAINTIFFS'
	)	REQUEST TO REQUIRE SUPPLEMENTAL
	)	BRIEFING FOR AN NIH NAMED PLAINTIFF
DONALD J. TRUMP, in his official capacity as	)	Judge: Hon. Rita F. Lin
President of the United States, <i>et al.</i> ,)	
Defendants.	)	Hearing Date: August 26, 2025
	)	Time: 10:00 AM
	)	Judge: Hon. Rita F. Lin
	)	Place: San Francisco Courthouse
	)	Courtroom 15

INTRODUCTION

On the evening of August 20, 2025, Plaintiffs contacted Defendants and stated that they plan to seek leave of Court to “file supplemental briefing in advance of Tuesday’s hearing seeking to expand our pending preliminary injunction and class cert motion to encompass NIH.” Ex. A at 2. Defendants informed Plaintiffs this morning at 9:56am PST that they planned to oppose supplemental briefing. *Id.* at 1. Defendants further informed Plaintiffs at 11:48am PST that they were prepared to file their opposition at the convenience of Plaintiffs.

Plaintiffs subsequently filed a letter brief at 7:06pm PST, ECF No. 102. That brief advocates based on a recent decision, in conflict with Local Rule 7-3(d)(2) which provides a procedure for identifying a recent decision and states that a party shall present it “without argument.” The brief also suggests supplemental briefing regarding the Ninth Circuit’s recent order; the Supreme Court’s recent decision; and adding a named NIH plaintiff. Finally, Plaintiffs suggest that the Court should continue the hearing date.

At this late hour Eastern Standard Time, Defendants do not have a position on the issues Plaintiffs did not previously raise with Defendants. However, Defendants file this response to Plaintiffs’ request to modify the agreed schedule in order to add an NIH plaintiff, which they had previously prepared in response to Plaintiffs’ inquiry.

Plaintiffs’ late hour request to add an NIH plaintiff should be rejected. The long-scheduled hearing on the fully briefed motion is five days away. The agreed time to add named plaintiffs has long since passed. Meanwhile, the action Plaintiffs cite as a basis to disrupt the agreed schedule happened over three weeks ago and was the subject of briefing. To the extent Plaintiffs’ reason to add a named NIH plaintiff now is based on the suspension action discussed and litigated earlier this month, they should have informed the Court and Defendants more than five days away from the relevant motion hearing.

Moreover, Plaintiffs have had both sufficient time and incentive to add a named NIH plaintiff on the agreed schedule. As the timeline provided below shows, Plaintiffs sought to negotiate a stipulation related to NIH and, when the negotiations were unsuccessful, affirmatively represented that they would add a named plaintiff with grants at NIH. They then decided not to do so. They should not now get a second chance when doing so will significantly disrupt this schedule and force Defendants to respond to DEFS.’ RESP. TO PLS.’ REQUEST TO REQUIRE SUPP. BRIEFING

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1 a new motion on the eve of a previously set hearing. The Court should deny Plaintiffs' request and
2 maintain the agreed, orderly, schedule for adding named plaintiffs and resolving this case.

3 DISCUSSION

4 First, this Court is already aware of the NSF and NIH suspension actions and its timeline. That
5 timeline counsels against allowing Plaintiffs to change the present schedule and to seek last minute
6 briefing on this issue.

7 Plaintiffs and Defendants conferred on August 1 about the suspension actions and filed briefs
8 informing the Court on August 4. ECF Nos. 78, 79. Plaintiffs provided no indication at any point before
9 the evening of August 20 that they planned to add a named NIH plaintiff and further expand the
10 preliminary injunction. In the meantime, Plaintiffs presumably have identified one or more named NIH
11 plaintiffs, prepared a declaration or declarations, and drafted a second amended complaint. Yet they are
12 only now informing Defendants and the Court of their planned course of action. But the Parties together
13 prepared an agreed schedule for amending the complaint, adding additional agencies to any preliminary
14 injunction, briefing summary judgment, and related procedural steps. Joint Case Management Statement
15 at 5-6, ECF No. 58. And Plaintiffs were certainly aware that non-enjoined agencies could take additional
16 actions on grants—that is why they sought prospective relief to bar future grant terminations. It is thus
17 inappropriate for Plaintiffs to disrupt that agreed schedule based on an action they always knew was
18 possible, particularly with so little notice beforehand.

19 This is especially true given that Plaintiffs had affirmatively represented in July that they would
20 add a named NIH plaintiff. As the below timeline demonstrates, Plaintiffs had both the incentive and
21 opportunity to add a named NIH plaintiff and declined to do so.

- 22 • June 30: The Parties file an agreed schedule where Plaintiffs will amend their complaint
23 by July 18 to add additional named plaintiffs for additional agencies, with subsequent
24 expedited discovery, briefing, and a hearing on August 26. Joint Case Management
25 Statement at 5.
- 26 • July 2: Defendants, at Plaintiffs' request, provide Plaintiffs with information regarding the
27 universe of NIH grants covered by an injunction in another case, *MA v. Kennedy*. Ex. B at

6-7.

- July 8: Plaintiffs propose a stipulation that NIH will restore grants and, in exchange, “we will forgo adding an NIH plaintiff.” Ex. B at 3.
- July 9: Defendants decline Plaintiffs’ proposed stipulation and state “we are open to negotiating a process that would minimize procedural burden to tee up the issue for the Court by the parties.” Ex. B at 2.
- July 11: Defendants offer an alternative stipulation and procedural pathway for the NIH grants to be considered in order to “tee up the facts and law for the court.” Ex. B at 1.
- July 11: Plaintiffs decline, at the time, to take up Defendants’ offer and state “[w]e will be adding an NIH plaintiff, as we have confirmed that there are a number of UC grants that were not captured by the *MA v. Kennedy* injunction.” Ex. B at 1.
- July 18: Plaintiffs file their Amended Complaint without a named plaintiff listed on NIH grants. ECF No. 68.

In sum, Plaintiffs were aware that relevant grants were not covered by other injunctions. Plaintiffs sought to negotiate a stipulation to cover NIH grants. When those negotiations were unsuccessful, Plaintiffs represented that they would add an NIH plaintiff. Plaintiffs chose not to add such a plaintiff. They now seek to reverse that choice, despite the agreed schedule adopted by the Court.

Finally, to prepare unexpected supplemental briefing would be a substantial burden. It would require Defendants’ counsel to rapidly prepare a substantive brief in one and a half business days, if the hearing is not continued. A substantive brief, however, requires consulting with the agency to determine the factual circumstances relevant to the motion as well as the agency’s position. After a draft brief is prepared, it must go through internal and agency review before it is approved and can be filed. This rapid timeline would be extraordinarily difficult under the circumstances.

If the Court is inclined to order supplemental briefing on adding an NIH plaintiff without continuing the hearing, Defendants respectfully request that the Court move the hearing to Zoom and file a motion to that effect simultaneously with this opposition.

CONCLUSION

1 For the foregoing reasons, Defendants respectfully request that the Court reject supplemental
2 briefing on adding an NIH plaintiff. If the Court grants supplemental briefing, Defendants respectfully
3 request that the Court grant Defendants' simultaneously filed motion to hold the August 26 hearing on
4 Zoom because of the substantial burden travel would impose.

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7 DATED: August 21, 2025

Respectfully submitted,

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